

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of WorldCom, Inc. and MCI)
Communications Corporation for Transfer)
of Control of MCI Communications)
Corporation to WorldCom, Inc.)

CC Docket No. 97-211

**BELLSOUTH CORPORATION'S OPPOSITION TO
PROPOSED PROTECTIVE ORDER**

To: The Commission

BellSouth opposes entry of the protective order drafted by WorldCom, Inc. and MCI Communications Corporation. Their proposal is entirely too restrictive and seems designed more to hinder the ability of the parties to this proceeding to provide informed comments than to protect genuinely confidential information. The Commission should follow directly relevant precedent and enter a standard protective order that protects the rights and interests of all parties to this proceeding. The protective orders adopted by the Commission in its section 271 proceedings provides the right model. In fact, the section 271 model draws substantially on the order used in the Commission's AT&T-McCaw proceeding, which, like this proceeding, involved review of Hart-Scott-Rodino Act documents. *Comment Sought on Standard Protective Order to be Used in Connection with Section 271 Applications*, 11 FCC Rcd 13904 (October 23, 1996) at 1. WorldCom and MCI have not addressed why this model would be anything less than completely adequate to protect confidential information in this proceeding.

BellSouth sets out particular objections to overly restrictive portions of the proposed protective order and points out appropriate language from the Commission's section 271 and AT&T-McCaw protective orders in the following paragraphs.

1. Restriction To Outside Counsel and Personnel. The proposed protective order seeks to restrict access to confidential material to "outside counsel of record...who are actively engaged in the conduct of this proceeding." Proposed Order at ¶ 2. WorldCom/MCI offer no specific reason for this extremely restrictive provision. BellSouth, like many other parties to this proceeding, is not represented by outside counsel. Thus, the effect of adopting this provision would be to make providing informed comment more difficult and more costly. The Commission's section 271 protective orders explicitly allow in-house counsel access to confidential materials, providing for access by "counsel of record ... including in-house counsel who are actively engaged in the conduct of this proceeding." Protective Order, *In the Matter of Application of BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Dkt. No. 97-208, released Sept. 30, 1997, at ¶ 3 ("*South Carolina Protective Order*"). The protective order entered in the AT&T-McCaw acquisition similarly provides in-house counsel access to Hart-Scott-Rodino confidential information. Protective Order, *In the Matter of American Telephone and Telegraph Company and Craig O. McCaw Applications for Consent to Transfer of Control of Radio Licenses*, File No. ENF-93-44, adopted May 13, 1994 ("*AT&T-McCaw Protective Order*") at ¶ 3. WorldCom and MCI offer no reason to deviate from this practice and exclude in-house counsel access.

The section 271 protective orders also allow “in-house economists and regulatory analysts, provided they are under the supervision of the counsel of record” to have access to confidential information. *South Carolina Protective Order* at ¶ 3. WorldCom/MCI’s proposed order appears to prohibit such access. Again, WorldCom/MCI give no specific explanation of why this more restrictive approach is necessary.

Any protective order entered in this proceeding should allow in-house counsel, economists and regulatory analysts access to confidential information using the language the Commission has included in the section 271 protective orders.

2. Client Consultation. Paragraph 10 of the proposed order would allow a lawyer to advise clients relating to the conduct of this proceeding as long as the lawyer does “not disclose “ confidential information. Both the section 271 and AT&T-McCaw protective orders use a more workable standard, prohibiting lawyers from “making specific disclosure” of confidential information. *South Carolina Protective Order* at ¶ 9. *AT&T-McCaw Protective Order* at ¶ 9. WorldCom/MCI offer no specific reason for their less workable approach. The Commission should adopt the standard from its earlier protective orders prohibiting “specific disclosure.”

3. Outside Experts. Paragraph 3 of the proposed protective order would add an additional, unnecessary, restriction on consultation with outside experts, requiring outside experts to be “not ... affiliated in any way with any competitor” of WorldCom or MCI. WorldCom/MCI provide no comment on how “affiliated in any way” is to be defined or why this language is needed. Neither the section 271 protective orders nor the AT&T-McCaw protective order incorporate this additional language. Those orders allow consultation with “outside consultants or experts retained to render professional services

in this proceeding.” *South Carolina Protective Order* at ¶ 3; *AT&T-McCaw Protective Order* at ¶ 3. The Commission should reject WorldCom/MCI’s proposal here, and use its standard language.

4. Permissible Disclosure. WorldCom/MCI also seek an unjustified power to effectively veto disclosure in paragraph 5. Proposed paragraph 5 requires persons seeking access to confidential information to notify WorldCom/MCI five days in advance. If WorldCom/MCI object, proposed paragraph 5 would allow them to withhold access even if the Commission orders it, until the objection is resolved by the courts. The section 271 orders and the AT&T-McCaw order require disclosure if the Commission so rules. *South Carolina Protective Order* at ¶ 3; *AT&T-McCaw Protective Order* at ¶ 3(c). The Commission should reject WorldCom/MCI’s proposed language here.

5. Waiver. WorldCom/MCI attempt to insert a wholly unjustified anti-waiver provision in paragraph 8 of the proposed order. There are no similar provisions in the section 271 protective orders or the AT&T-McCaw protective order. WorldCom/MCI offer no justification for this provision, and there is no reason for the Commission to adopt it. The Commission should strike this paragraph.

6. Acknowledgement of Confidentiality. The proposed protective order contains an “Acknowledgement of Confidentiality” form that adds unnecessary restrictions to the Commission’s standards. For example, the proposed acknowledgement limits access to outside counsel. The acknowledgment used in the section 271 proceedings is more accurate and more concise. The Commission should simply substitute the section 271 acknowledgement for the one proposed by WorldCom/MCI.

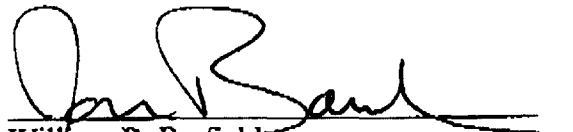
CONCLUSION

The WorldCom/MCI proposed protective order would unnecessarily handicap the ability of the other parties to this proceeding to provide the Commission informed comments. The Commission's standard orders provide sufficient protection to confidential information. WorldCom/MCI's absolute failure to provide any support for the additional restrictions they propose suggest that their real motive is not legitimate protection of any confidential information they may submit. The Commission should substitute a standard confidentiality order for the one proposed by WorldCom/MCI as described in the comments above.

Respectfully submitted,

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Dated: May 7, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of May, 1998 served the following parties to this action with a copy of the foregoing **BELLSOUTH CORPORATION'S OPPOSITION TO PROPOSED PROTECTIVE ORDER** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties at the addresses listed below:

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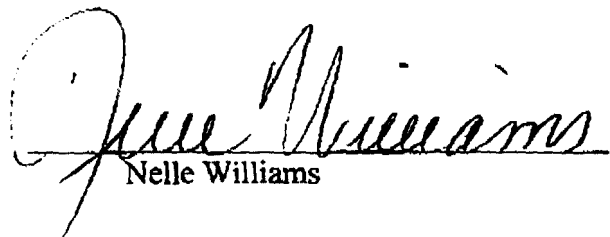
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Date: May 7, 1998